

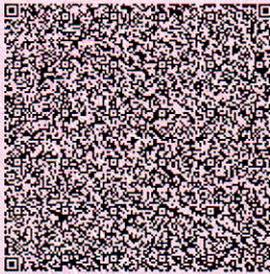


सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration

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Unique Doc. Reference : SUBIN-CHCHIMPSP0703925203583468N
Purchased by : ASHWINIE KUMAR BANSAL
Description of Document : Article 12 Award
Property Description : #1187 ADVOCATE ENCLAVE SEC 49 A CHD
Consideration Price (Rs.) : 0
(Zero)
First Party : ASHWINIE KUMAR BANSAL
Second Party : Not Applicable
Stamp Duty Paid By : ASHWINIE KUMAR BANSAL
Stamp Duty Amount(Rs.) : 115
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AWARD

Ashwinie B
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ARBITRATION AWARD

(On Stamp Paper)

**INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA
[NIXI]**

ARBITRAL TRIBUNAL CONSISTING OF

SOLE ARBITRATOR:

DR. ASHWINIE KUMAR BANSAL, L.L.B; Ph.D.

Advocate, Punjab & Haryana High Court,

**House No: 187, Sector- 49A, Advocate Society,
Chandigarh**

Email:akbansaladvocate@gmail.com

Mobile: +919915004500

In the matter of:

HOLA, S.L. A company incorporated under the laws of Spain, having its principal place of business at Miguel Angel, 1, 28010 Madrid, Spain, email: gdiaz@hola.com

...Complainant

VERSUS

Viraj Malik, Percept Knorigin Solutions Pvt. Ltd.

C1201 Mantari Sarovar, HSR Layout, Bangalore- 560 034,
email: virajmalik@gmail.com

...Respondent

ASHWINIE BANSAL

REGARDING: DISPUTED DOMAIN NAME: WWW.HELLOTV.IN

1. The Parties:

Complainant:

Complainant in the arbitration proceedings is: HOLA, S.L. a company incorporated under the laws of Spain, having its principal place of business at Miguel Angel, 1, 28010 Madrid Spain. It is represented by its advocates M/s Remfry & Sagar, Gurgaon, India.

Respondent:

Respondent in the arbitration proceedings is: Viraj Malik, Percept Knorigin Solutions Pvt. Ltd. C1201 Mantari Sarovar, HSR Layout, Bangalore-560 034, email: virajmalik@gmail.com. It is represented by its advocate Mr. Kaushik Moitra.

2. The Domain Name and the Registrar:

The disputed domain name <hellotv.in> is registered with GoDaddy.com LLC (R101-AFIN) (the "Registrar").

3. Procedural History [Arbitration Proceedings]

A Complaint has been filed with the National Internet Exchange of India (NIXI). Complainant has made the registrar verification in connection with the disputed domain name <hellotv.in>. It is confirmed that at present Respondent is listed as the Registrant and provided the administrative details for administrative, billing and technical contact. NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole arbitrator in this matter. The Arbitrator has

submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

NIXI sent the hard copy of the complaint and annexures to Respondent which has been duly delivered to Respondent.

In accordance with the INDRP Rules of Procedure (the Rules), Arbitrator directed Respondent on 07.11.2015, with copy to Complainant and NIXI, through the email, to give his response within 15 days. Respondent had filed the Written Statement dated 13.11.15 through email and subsequently a hard copy was also received from him. Complainant had also filed Reply to the Written Statement of Respondent vide email dated 04.12.2015. Both the parties also filed various documents along with the pleadings. The Arbitrator has examined the pleadings and the documentary evidence produced by the parties.

4. Factual Background

Complainant is a company existing under the laws of Spain, which had launched its premier magazine in the year 1944. The magazine was introduced under the mark HOLA which is a Spanish word and means Hello. Complainant has got its Trademark HELLO! registered in many countries . In the year 1988 an offshoot of the magazine under the mark Hello! was launched in the United Kingdom.

Respondent has registered the disputed domain name <hellotv.in> on 23.09.2009 which incorporates mark of Complainant. Hence, present Complaint has been filed by Complainant against Respondent for transferring the disputed domain name to him.

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5. Parties Contentions

A. Complainant

Complainant is a company registered in Spain and a leading international publisher of magazines and periodicals having circulation across the Globe. Complainant had launched its premier magazine under the mark HOLA and enjoyed reputation of prestigious and historic coverage of about 71 years of publication. Complainant had launched an offshoot of its magazine under the mark Hello! in the United Kingdom in 1987 which has become very popular over the years.

Complainant has applied for/ secured registration of mark HELLO! in number of jurisdictions of the world including Albania, Algeria, Armenia, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, China, Croatia, Cuba, India etc. Registration of mark HELLO! dates back to 26.06.1987 in the United Kingdom under the classes 16 and 41. The mark HELLO! under class 38 has been registered in India on 08.12.2003. The application dated 19.02.1999 under class 16 for registration of mark HELLO! is pending in India. The application dated 09.08.2007 under class 38 and 41 for registration of another related mark HELLOTV! is also pending in India.

Complainant has also registered number of domain names comprising its mark HELLO! The domain name Hellotv.com was created on 15.12.1999 by Complainant.

Complainant's publication under the mark HELLO! established itself since its launch in the year 1988 which has current print circulation of about 10 lacs copies every month leading to handsome financial income to Complainant.

The trademark Hello! has, on account of extensive and continuous use and trademark registration throughout the world, including in India, is exclusively identified with Complainant and its goods and business. In India, publications under the trademark Hello! are distributed by Complainant's licensee, viz, Worldwide Media Private Limited, Mumbai. The publications under the mark HELLO! enjoyed popularity in India on account of the constant interchange of visitors between India and other parts of the world where Complainant's magazines under the said trademark were sold. In the course of their overseas trips, these Indian visitors had the occasion to use and be exposed to Complainant's magazines and upon their return to India, they carried with them the memories of the same and their high quality content. The reputation and good will enjoyed by Complainant also percolated into India as result of extensive advertisement in the international media including the internet.

Complainant desirous of extending its rights on the internet endeavoured to register the domain name 'hellotv.in'. However, when Complainant sought to register the said domain name, it came to learn the said domain was already registered in the name of Respondent.

Respondents domain name is identical to and fully comprise of the mark in which Complainant has prior rights. It is pertinent to note that Complainant had adopted the mark HELLO! since 1987 and launched a magazine in the United Kingdom. It is apparent that Respondent's domain name wholly contains and is identical to Complainant's trademark HELLOTV! in which Complainant has

statutory rights as detailed in the complaint apart from common law rights.

Respondent has created the disputed domain name in 2009 after many years subsequent to registration of Trademark of Complainant as well as registration of the domain names. Hence continuous use of the disputed domain name by Respondent dilutes the trademark of Complainant, thereby causing harm to its reputation. Hence the present complaint has been filed.

B. Respondent

Respondent has submitted his detailed written statement along with number of Annexures on 13.11.2015 denying the allegations contained in the Complaint.

Respondent has experience of more than 20 years with various organization like Infosys, Global Telesystems, etc. Respondent has registered the domain name as an authorized representative of P.K Online Ventures Private Limited which was formerly known as Precept Knorigin Solutions Private Limited. The said company Knorigin Solutions Private Limited was founded in 2007 which changed its name in 2009 and provides consultation services in terms of media and technology for building their digital prints. The website: hellotv.in was registered on 23.09.2009 for making entertainment assessable to everyone. The website has put across various categories of videos classifies as per viewer as per viewers ratings and categories. The website also allows the users to create their own videos and share across the website. The company of Respondent has also filed applications for registration of trademarks

in India during 2011 and 2014 besides registering various domain names containing the mark HELLO during the period 2012 to 2015. Respondent has heavily invested in the expensive advertisement of the disputed domain name and its services. Respondent has developed various Apps for the benefit of the users and subscribers. Respondent has launched various products for its customers.

The websites of the parties cater to different set of seekers of information over the internet. The website of Respondent attracts audience which seeks to catch on with existing TV channels and movies whereas website of Complainant is for the audience which seeks information relating to the celebrity world, cuisine, travel and beauty. Respondent has very limited audience in India and he has not made any attempt seeking global audience.

Respondent has also shown its willingness, without prejudice to its rights and contentions, to furnish a disclaimer over its website for any wary browser to be made certain there being no existence of any relationship between Complainant and Respondent to avoid deception and confusion.

6. Discussion and Findings

Arbitrator has carefully considered complaint, written statement, Reply to Written Statement and other documents supplied by the parties before making the award.

It remains incumbent on Complainant to make out its case in all respects under Paragraph 4 of the .IN Domain Name Dispute Resolution Policy ('the Policy'), which sets out the three elements that must be present for the proceeding to be brought against

Respondent, which Complainant must prove to obtain a requested remedy. It provides as follows:

"4. Types of Disputes

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which Complainant has rights;

(ii) the Registrant has no rights or legitimate interests in respect of the domain name; and

(iii) the Registrant's domain name has been registered or is being used in bad faith.

The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

The Arbitrator will address the three aspects of the Policy listed above.

A. Identical or Confusingly Similar

Complainant has established that it has made applications for registration of the trademark HELLO! and its other related marks across various classes in various countries including India. The application for Trademark HELLOTV! was made by Complainant on 08.07.2007 to the Registrar of Trade Marks, New Delhi, India under

class 38 and 41.

The trademark HELLOTV has become associated by the general public exclusively with Complainant. Complainant has domain name registrations as well as website incorporating the trademark HELLO.

Respondent has registered the disputed domain name <hellotv.in> wholly incorporating the trademark HELLO of Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The generic Top-Level Domain (gTLD) is typically not an element of distinctiveness that is taken into consideration when evaluating the identity or confusing similarity between a Complainant's trademark and a disputed domain name¹. The Arbitrator finds that the registration of the trademark HELLOTV is *prima facie* evidence of Complainant's trademark rights for the purposes of the Policy². Internet users who enter the domain name <hellotv.in> being aware of the reputation of Complainant may be confused about its association or affiliation with Complainant.

The Arbitrator finds that the disputed domain name <hellotv.in> is confusingly similar to the website and trademark HELLO of Complainant.

¹ See *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525; *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. D2000-0429; *Phoenomedia AG V. Meta Verzeichnis Com*, WIPO Case No. D2001-0374.

² See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

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B. Rights or Legitimate Interests

Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name³.

Complainant has registered the disputed domain name consisting of the trademark HELLO. Complainant has been using the trademark for long time. Complainant has not authorized or permitted Respondent to use the trademark HELLO. The Arbitrator finds that Complainant has made out a *prima facie* case.

Paragraph 7 of the Policy provides as under:

"Registrant's Rights to and Legitimate Interests in the Domain Name

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii) :

(i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;

³ See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

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(ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or

(iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

Respondent has submitted that he had registered the disputed domain name and used the same for his website since 2009. Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name <hellotv.in> prior to registration of disputed domain name in the year 2009.

Complainant had registered the Trademark HELLO! on 24.06.1987 in the United Kingdom and subsequently made many applications in India for registration of its Trademarks during that period 1999 to 2013. Complainant has produced evidence of trademarks applications filed before the authorities and registrations with the complainant.

Complainant has also used other documents indicating its popularity on the net hence it cannot be said that Respondent who was not aware about Trademark rights of Complainant in the year 2009, when he had registered the disputed domain name.

Respondent has not been commonly known by the domain name and moreover he is making commercial use of the disputed domain name which incorporates Trademark of Complainant.

Based on the facts as stated above, the Arbitrator finds that Respondent has no rights or legitimate interests in respect of the disputed domain name <hellotv.in>.

C. Registered and Used in Bad Faith

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

"6. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name,

provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

Each of the three circumstances in Paragraph 6 of the Policy, if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that Respondent is continuing to act in bad faith.

Respondent has registered the disputed domain name <hellotv.in> in the year 2009 after many years of registration of the trademark by Complainant in the United Kingdom and India in 1987. Complainant has not granted Respondent permission, or, a license of any kind to use its trademark HELLO! and register the disputed domain name <hellotv.in>. Such unauthorized registration of the trademark by Respondent suggests opportunistic bad faith. Respondent's true intention and purpose of the registration of the disputed domain name <hellotv.in> which incorporates the trademark of Complainant is, in this Arbitrator's view, to capitalize on the reputation of the trademark.

The Arbitrator therefore finds that the disputed domain name

<hellotv.in> has been registered by Respondent in bad faith.

The trademark of the Complainant has been a well-known name. The disputed domain name <hellotv.in> is confusingly similar to Complainant's trademark HELLO! and Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <hellotv.in> in bad faith. These facts entitle Complainant to an award transferring the domain name <hellotv.in> from Respondent. The Arbitrator allows the Complaint and directs that Respondent's domain name <hellotv.in> be transferred in favour of Complainant.

7. **Decision**

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <hellotv.in> is similar to the trademark HELLO! in which Complainant has rights. The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <www.hellotv.in> be transferred to Complainant.

The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh
Dated: 02.01.2016



Dr. Ashwinie Kumar Bansal
Sole Arbitrator

Advocate, Punjab and Haryana High Court
#187, Advocates Society, Sector 49-A
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